

Luis F. Ramírez (022653)
lramirez@pryorandamar.com
Shalev Amar (022332)
samar@pryorandamar.com
Pryor Ramírez & Amar, LLC
40 W. Baseline Road, Suite 203
Tempe, AZ 85283
(480) 947-7755
(866) 663-3497 (facsimile)
Attorneys for Plaintiff

UNITED STATES DISTRICT COURT
DISTRICT OF ARIZONA

Theresa Carter,)	Case No.:
)	
Plaintiff,)	COMPLAINT --
)	VIOLATION OF THE MAGNUSON-
vs.)	MOSS WARRANTY ACT
)	
Volkswagen Group of America, Inc.))	
d/b/a Audi of America, Inc.)	
)	
Defendant.)	

1. The District Court has jurisdiction to hear this matter under 28 U.S.C. § 1331 as there is a federal question pursuant to the Magnuson-Moss Warranty Act, 15 U.S.C. § 2301 *et seq.* Jurisdiction is also conferred through 15 U.S.C. § 2310(d) as the amount in controversy exceeds \$50,000.00.

2. Plaintiff, Theresa Carter (öPlaintiffö), is a consumer who resides in Arizona.

3. Defendant, Volkswagen Group of America, Inc. d/b/a Audi of America, Inc. (öDefendantö) is a foreign corporation authorized to do business in the State of Arizona and is engaged in the manufacture, sale, supply and distribution of motor

1 vehicles and attendant warranties. Defendant supplies its products and services to the
2 Arizona consuming public through its authorized dealerships, including Audi of North
3 Scottsdale.
4

5 4. On August 11, 2007, Plaintiff purchased from Audi of North Scottsdale a
6 new 2008 Audi TT VIN # TRUMF38J081004088 (öTTö) supplied and warranted by
7 Defendant, for \$54,493.39 inclusive of all fees and charges incurred during purchase and
8 financing.
9

10 5. In connection with Plaintiff's purchase of the TT Defendant issued and
11 supplied Plaintiff with its written warranty, which has 4 year/50,000 mile bumper to
12 bumper coverage.
13

14 6. Under Defendant's repair or replacement warranty, Defendant was required
15 (through its authorized dealership warranty repair agents) by common law, State law, and
16 statute to perform adequate and competent repairs or replacements within a reasonable
17 opportunity, as competent repairs within a reasonable opportunity is the essential purpose
18 of warranties restricted to repair or replacement of defective parts.
19

20 7. The TT has been consistently defective throughout the warranty period.
21 The TT has experienced the following defects and conditions: a defective convertible top,
22 steering wheel, vibration, tires, oil consumption, spoiler, power windows, and windshield
23 wiper.
24

25 8. The TT has been taken repeatedly to Defendant's authorized repair agents
26 for attempted repairs of these non-conformities. Indeed, the TT's defective convertible
27 top, whose proper operation is essential to the safety of Plaintiff's person and
28

1 possessions, has been taken to Defendant's repair agents for eight (8) separate repair
2 attempts. Additionally, the vehicle has been out of service due to attempted repairs for at
3 least thirty eight (38) days.
4

5 9. Plaintiff provided Defendant notice and a reasonable opportunity to repair
6 the defects, non-conformities and conditions within the TT.
7

8 10. Defendant failed to cure the TT in reasonable opportunity and thus the TT's
9 warranty failed its essential purpose.

10 11. Defendant's failure to correct the TT's defects within a reasonable
11 opportunity violates Defendant's statutory and common law duties to Plaintiff and the
12 expectations created by Defendant's promotional documents and warranties.
13

14 12. Plaintiff gave Defendant additional notification of the defects within the TT
15 and the excessive number of times Defendant's authorized repair agents attempted
16 repairs, as well as Plaintiff's lawful demand for the remedies provided by law on July 15,
17 2011.
18

19 13. The parties could not come to an accord thus the present litigation ensued.
20

21 14. Plaintiff did not receive the basis of her bargain for a new TT. Instead
22 Plaintiff was saddled with a TT riddled with substantial defects akin to an improperly
23 maintained high mileage lower value used vehicle.
24

25 15. As a direct and proximate result of Defendant's failure to comply with its
26 duties under written warranty, statutory obligations, and common law duties, Plaintiff has
27 suffered damages and, in accordance with 15 U.S.C. §2310(d), Plaintiff is entitled to
28 bring suit for such damages.

1 such supplier enters into a service contract with the consumer which applies to such
2 consumer product. *See* 15 U.S.C. §2308 (a).

3
4 23. Defendant (the supplier of the vehicle herein) entered into a service contract
5 with Plaintiff at the time of sale which applies to the TT.

6 24. Any of Defendant's attempts to disclaim the implied warranty of
7 merchantability are invalid. *See* 15 U.S.C. §2308 (c) (A disclaimer, modification, or
8 limitation made in violation of this section shall be ineffective for purposes of this
9 chapter and State law.)
10

11 25. Because of its defects and repair history the TT is not fit for its ordinary
12 purpose.
13

14 26. Defendant has breached the implied warranty of merchantability to
15 Plaintiff.
16

17 WHEREFORE, Plaintiff requests that the Court:

- 18 a. Enter judgment against Defendant for all actual, incidental and
19 consequential damages to which Plaintiff is entitled;
20
21 b. Grant Plaintiff all reasonable attorneys fees, litigation costs and
22 expenses pursuant to 15 U.S.C. §2310 (d)(2); and,
23
24 c. Grant other relief deemed just and appropriate.

25 **COUNT III**
26 **BREACH OF IMPLIED WARRANTY OF FITNESS FOR A PARTICULAR**
27 **PURPOSE**

28 27. Plaintiff re-alleges and incorporates by reference paragraphs 1-26 of this
Complaint.

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Tempe, AZ 85283
Attorneys for Plaintiff